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6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION
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10 OPERATING ENGINEERS' PENSION
11 TRUST FUND; F.G. CROSTHWAITE and
12 RUSSELL E. BURNS, as Trustees,

13 Plaintiffs,

14 vs.

15 TERRASEARCH, a California Corporation, 3
16 MAK, LLC, a California Limited Liability
17 Company, TERRASEARCH GULF, a
18 California partnership, SIMON MAKDESSI,
19 as an individual, and ISSAM MAKDISSY, as
20 an individual, and DOES 1-20,

21 Defendants.
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Case No: C 10-04964 SBA

**ORDER DENYING PLAINTIFFS'
EX PARTE APPLICATION TO
EXTEND DISCOVERY CUT-OFF
DEADLINES**

Dkt. 106

20 The parties are presently before the Court on Plaintiffs' Ex Parte Application to
21 Extend Law and Motion Cut-Off Deadlines. Dkt. 106. Having read and considered the
22 papers filed in connection with this matter and being fully informed, the Court hereby
23 DENIES the application for the reasons set forth below.

24 On February 27, 2012, the Court issued its Order for Pretrial Preparation, which,
25 inter alia, set March 26, 2013, as the last day to hear motions. See Order for Pretrial
26 Preparation at 1-2, Dkt. 74. Almost a year later on February 6, 2013, the parties submitted
27 a stipulated request to modify the Court's pretrial schedule by continuing the trial date and
28 extending all pretrial deadlines, including the law and motion cut-off date. Dkt. 96. On

1 February 8, 2013, the Court denied the request, finding that the parties have not been
2 diligent in meeting the deadlines set in the Court's Order for Pretrial Preparation. See
3 Order Denying Request to Modify Trial Date at 2, Dkt. 96.

4 On March 1, 2013, Plaintiffs filed a motion for summary judgment. Dkt. 99. Given
5 that the law and motion cut off is March 26, 2013, coupled with the 35-day notice period
6 required for motions, Civ. L.R. 7-2(a), Plaintiffs' motion cannot be heard unless the Court
7 modifies its Order for Pretrial Preparation. To that end, Plaintiffs have accompanied their
8 summary judgment motion with an ex parte application to extend the law and motion cut-
9 off date. Dkt. 106. Defendants oppose Plaintiff's ex parte request. Dkt. 110.

10 Federal Rule of Civil Procedure 16 provides that deadlines established in a case
11 management order may "be modified only for good cause[.]" Fed. R. Civ. P. 16(b)(4).
12 "Good cause" exists when a deadline "cannot reasonably be met despite the diligence of the
13 party seeking the extension." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609
14 (9th Cir. 1992). Thus, "Rule 16(b)'s 'good cause' standard primarily considers the
15 diligence of the party seeking the amendment." Id.; see also Coleman v.
16 Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000). "If the party seeking the
17 modification 'was not diligent, the inquiry should end' and the motion to modify should not
18 be granted." Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting
19 Johnson, 975 F.2d at 609).


20 Plaintiff's current ex parte application to extend the law and motion cut-off date is,
21 in essence, a motion for reconsideration of the Court's February 8th Order. However,
22 before filing a motion for reconsideration, the movant must first seek leave to do so under
23 Civil Local Rule 7-9. Plaintiffs have not complied with this requirement and the instant
24 motion otherwise fails to make the requisite showing under Local Rule 7-9. The Court may
25 summarily deny motions that are not filed in compliance with the Court's local rules. See
26 Tri-Valley CAREs v. U.S. Dept. of Energy, 671 F.3d 1113, 1131 (9th Cir. 2012) ("Denial
27 of a motion as the result of a failure to comply with local rules is well within a district
28 court's discretion.").

1 Setting aside Civil Local Rule 7-9 and the Court's prior ruling, Plaintiffs have not
2 otherwise made any showing of good cause in their ex parte application. Instead, Plaintiffs
3 merely state that Defendants refused to stipulate to their requested extension. Pls.' Ex Parte
4 Application at 1. Given Plaintiffs' failure to demonstrate good cause, as required by Rule
5 16, their request to extend the law and motion cut off is not well taken. Accordingly,

6 IT IS HEREBY ORDERED THAT Plaintiffs' Ex Parte Application to Extend Law
7 and Motion Cut-Off Deadlines is DENIED. This Order terminates Docket 99, 106 and 107.

8 IT IS SO ORDERED.

9 Dated: March 11, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge